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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
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BC  
Paper Number 18

In re application of  
Yasuo Suzuki et al.  
Serial No. 09/679,480  
Filed: October 5, 2000  
For: ELECTROPHOTOGRAPHIC PHOTORECEPTOR AND  
ELECTROPHOTOGRAPHIC IMAGE FORMING METHOD  
AND APPARATUS USING THE PHOTORECEPTOR

This is a decision on the applicants' PETITION FOR WITHDRAWAL OF THE NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION ISSUED ON AUGUST 2, 2002 requesting reconsideration and withdrawal of the Notice of Improper Request for Continued Examination (RCE), mailed August 2, 2002. The Notice of Improper Request for Continued Examination (RCE) stated that the request was not accompanied by a submission as required by 37 CFR 1.114. The petitioner asserts that the applicants' REQUEST FOR CONTINUED EXAMINATION (RCE) of July 8, 2002 is in compliance with the requirements of 37 CFR 1.114. The petitioner argues that the Declaration under 37 CFR 1.132 is a submission; thus, the requirements of 37 CFR 1.114 have been fully met.

## DECISION

A careful review of the application record indicates that the REQUEST FOR CONTINUED EXAMINATION (RCE) does satisfy all of the requirements set forth in 37 CFR 1.114.

37 CFR 1.114(c) states:

A submission as used in this section includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. If reply to an Office action under 35 USC 132 is outstanding, the submission must meet the reply requirements of §1.111. (Emphasis added).

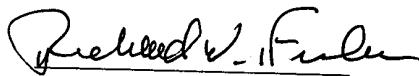
MPEP 706.07(h) states in Section II (SUBMISSION REQUIREMENT):

Arguments submitted after final rejection, which were entered by the examiner but not found persuasive, may satisfy the submission requirement if such arguments are responsive within the meaning of 37 CFR 1.111 to the Office action. Consideration of whether any submission is responsive within the meaning of 37 CFR 1.111 to the last outstanding Office action is done without factoring in the “final” status of such outstanding Office action. Thus, a reply which might not be acceptable as a reply under 37 CFR 1.113 when the application is under a final rejection may be acceptable as a reply under 37 CFR 1.111. (Emphasis added).

It is agreed that the submission of the Declaration filed under 37 CFR 1.132 is “new evidence in support of patentability.” Additionally, the arguments submitted in the REQUEST FOR

RECONSIDERATION filed April 8, 2002 are deemed to be in compliance with the requirements of 37 CFR 1.111.

Accordingly, the petition is granted. The Notice of Improper Request for Continued Examination (RCE) of August 2, 2002, is hereby vacated, and the application file is being forwarded to Group Art Unit 1753 for RCE processing. Upon completion of the RCE processing, the application file will be forwarded to the examiner for preparation of an Office action on the merits.



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